



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,453	07/05/2001	Gerald Francis McBrearty	AUS9-2001-0338-US1	4097
7590	02/11/2009		EXAMINER	
Volel Emile International Business Machines Corporation Intellectual Property Law Department 11400 Burnet Road, Internal Zip 4054 Austin, TX 78758			NGUYEN, TRI V	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			02/11/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* GERALD FRANCIS McBREARTY,  
SHAWN PATRICK MULLEN and JOHNNY MENG-HAN SHIEH

---

Application No. 09/899,453  
Technology Center 1700

---

Mailed: February 11, 2009

---

Before PAMELA S. BENNETT, *Review Team Paralegal.*

BENNETT, *Review Team Paralegal.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on January 21, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

**AMENDMENT AFTER APPEAL TO THE BOARD OF  
APPEALS**

Appellants filed a paper entitled “Amendment After Appeal to the Board of Appeals” and a Reply Brief dated December 16, 2008. While the PTO-90 mailed January 14, 2009 stated, in part, that “[t]he reply brief filed 12/16/2008 has been entered and considered,” there is no indication on the record that the Examiner has considered the above “Amendment After Appeal to the Board of Appeals.”

In addition, it is noted that the “Corrected Section VIII. Claims Appendix” appended to the Reply Brief filed December 16, 2008 “for substitution in Appellants’ Brief on Appeal if the Amendment is entered,” is defective because the first line of claim 19 appears to contain strikeovers.

**CONCLUSION**

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) for consideration of the “Amendment After Appeal to the Board of Appeals” filed December 16, 2008 as required; and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

Volel Emile  
International Business Machines Corporation  
Intellectual Property Law Department  
11400 Burnet Road, Internal Zip 4054  
Austin, TX 78758